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1-2.101

Office of the Attorney General

The Attorney General serves as head of the Department of Justice (28 U.S.C. § 503) and as chief law enforcement officer of the federal government. *Marshall v. Gibson's Products, Inc. of Plano*, 584 F.2d 668 (5th Cir.1978). In this capacity, the Attorney General shall:

- A. Supervise the administration of the law enforcement operations of the Department of Justice which include the litigating divisions, the United States Attorneys, U.S. Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, Bureau of Prisons, Parole Commission and Office of the Pardon Attorney;
- B. Represent the United States in legal matters generally;
- C. Furnish advice and opinions, formal and informal, on legal matters to the President and the Cabinet and to the heads of the executive departments and agencies of the Government, as provided by law;
- D. Appear in person to represent the Government in the Supreme Court of the United States, or in any other court, in which he/she may deem it appropriate; and
- E. Designate, pursuant to Executive Orders No. 9788 of October 4, 1946 and No. 10254 of June 15, 1951, officers and agencies of the Department of Justice to act as disbursing officers for the Office of Alien Property.

While particularly important matters involving United States Attorneys may be acted upon by the Attorney General, some, by statute, regulation or practice, require his/her approval, see Prior Approval listing in each title of this Manual.

To assist the Attorney General in the performance of his/her duties, the following Committees have been established:

- A. The Attorney General's Advisory Committee of United States Attorneys which consists of 15 United States Attorneys representing the geographic areas of the nation, (*see* 28 C.F.R. § 0.10; USAM 3-2.000).
- B. An Incentive Awards Board which consists of the Deputy Attorney General or his/her designee as Chairperson, and four members designated by the Attorney General from among the Assistant Attorneys General, bureau heads or persons of equivalent rank in the Department. *See* 28 C.F.R. § 0.11.
- C. A Young American Medals Committee, which is composed of four members, one of whom shall be the Director of Public Affairs. *See* 28 C.F.R. § 0.12.

1-2.102 Office of the Deputy Attorney General

The Deputy Attorney General is authorized to exercise all the power and authority of the Attorney General, unless any such power or authority is required by law to be exercised by the Attorney General personally.

The Deputy Attorney General shall advise and assist the Attorney General in formulating and implementing Department policies and programs and in providing overall supervision and direction to all organizational units of the Department of Justice. The major functions of the Deputy Attorney General are to:

- A. Exercise all the power and authority of the Attorney General unless any such power or authority is required by law to be exercised by the Attorney General personally or has been specifically delegated exclusively to another Department official.
- B. Except as assigned to the Associate Attorney General by 0.19(a)(1), exercise the power and authority vested in the Attorney General to take final action in matters pertaining to:
 - 1. The employment, separation, and general administration of personnel in the Senior Executive Service and in General Schedule grades GS-16 through GS-18, or the equivalent, and of attorneys and law students regardless of grade or pay in the Department;
 - 2. The appointment of special attorneys and special assistants to the Attorney General, (28 U.S.C.515(b));
 - 3. The appointment of Assistant United States Trustees and fixing of their compensation; and
 - 4. The approval of the appointment by United States Trustees of standing trustees and the fixing of their maximum annual compensation and percentage fees as provided in 28 U.S.C. Section 586(e).
- C. Administer the Attorney General's recruitment program for honor law graduates and judicial law clerks.
- D. Coordinate departmental liaison with White House staff and the Executive Office of the President.
- E. Coordinate and control the Department's reaction to civil disturbances and terrorism.
- F. Perform such other activities and functions as may be assigned from time to time by the Attorney General.

1-2.103 Office of the Associate Attorney General

The Office of the Associate Attorney General (ASG) of the United States was created by Attorney General Order No. 699-77 on March 10, 1977.

As the third-ranking official at the Department of Justice, the Associate Attorney General is a principal member of the Attorney General's senior management team, and advises and assists the Attorney General and Deputy Attorney General on the formulation and implementation of Department of Justice policies and programs.

In addition to these duties, the ASG oversees the work of the Civil, Civil Rights, Antitrust, Tax and Environment and Natural Resources Division. The ASG also has oversight responsibility for the Office of Justice Programs, the Office of Information and Privacy, the Community Relations Service, the Executive Office for United States Trustees, and the Foreign Claims Settlement Commission and for all aspects of the implementation of the Violent Crime Control and Enforcement Act of 1994, including the new Community Oriented Policing Services (COPS) Program.

1-2.104 Office of the Solicitor General

A principal function of the Office of the Solicitor General is to represent the federal government before the Supreme Court. *See* 28 C.F.R. § 0.20. As such, this office is responsible for:

- A. The review and revision of, briefs on the merits in cases in which the government is a party or in which it participates as amicus curiae (either on its own motion or at the request of the court); petitions for certiorari; jurisdictional statements; briefs in opposition; and, amicus curiae filings at the petition stage.
- B. Preparation of miscellaneous papers filed in the Supreme Court such as, applications for and oppositions to stays; and, oppositions to bail, etc.;
- C. The arguing of cases in the Supreme Court; and
- D. The determination whether to seek Supreme Court review in cases that the government has lost in the lower courts.

Except for a few situations in which administrative agencies have statutory authority to take certain of their own cases to the Supreme Court, neither the United States nor its agencies may file a petition for certiorari or take a direct appeal to the Supreme Court unless the Solicitor General authorizes it. *See* 28 U.S.C. §§ 516, 518(a); 28 C.F.R. § 0.20(a). Although the Solicitor General reviews every case handled by the Department that the Department has lost in the appellate courts to decide whether to seek Supreme Court review, the Solicitor General reviews such cases handled by independent regulatory agencies only if requested to file a petition for certiorari.

Another major function of the office is to determine, in all cases where the United States loses in the trial courts, whether the government should appeal to the intermediate appellate courts. *See* 28 C.F.R. § 0.20(b). The office also must approve requests for the courts of appeals for mandamus, prohibition and other extraordinary writs, and requests for rehearing en banc. *Id.* The office also determines whether the government will file a brief amicus curiae or intervene in any appellate court. 28 C.F.R. 0.20(c). In cases handled by independent regulatory agencies rather than by the Department, however, the Solicitor General has no control over their appeal to intermediate appellate courts.

Finally, the Solicitor General may, in consultation with each agency or official concerned, authorize intervention by the government in cases involving the constitutionality of acts of Congress; and assist the Attorney General, the Deputy Attorney General, and the Associate Attorney General in the development of broad Department program policy. *See* 28 C.F.R. §§ 0.20(d), 0.21.

Policies and procedures are set forth more fully in Title 2, APPEALS, of this Manual.

1-2.105 Office of the Inspector General

The Office of the Inspector General (OIG) conducts investigations of employee misconduct and performs audits and inspections of Department programs and operations. The OIG also investigates allegations of fraud by contractors, grantees, and recipients of Department benefits, and third parties improperly seeking to influence the Department or its employees.

The OIG investigates allegations of misconduct involving all Department employees except those of the Federal Bureau of Investigation (FBI) or the Drug Enforcement Administration (DEA), and attorneys where the allegation involves the exercise of authority to investigate, litigate or provide legal advice and any law enforcement participants in such cases. The OIG, DEA and FBI have adopted a joint agreement on the guidelines under which allegations of serious misconduct, including criminal misconduct, against DEA and FBI agents and other employees will be reported to the OIG.

The Inspector General, appointed by the President, reports directly to the Attorney General. The OIG has offices in Atlanta, Boston, Chicago, Colorado Springs, Dallas, Denver, El Paso, Los Angeles, McAllen, Miami, New York, Philadelphia, San Diego, San Francisco, Seattle, Tucson, and Washington, D.C.

1-2.106 Office of Intelligence Policy and Review

The Office of Intelligence Policy and Review is headed by a Counsel for Intelligence Policy, appointed by the Attorney General.

The Office advises and assists the Attorney General on all matters relating to national security and in carrying out his/her responsibilities under Executive Order No. 12333, 46 *Fed.Reg.* 59,941 (1981), entitled "United States Intelligence Activities." Staff attorneys participate in development, implementation, and review of U.S. national security and intelligence policies, including procedures for the conduct of intelligence and counterintelligence activities. The Office maintains an Intelligence Analytic Unit (IAU) responsible for keeping the Attorney General and Deputy Attorney General current on national security matters pertaining to their responsibilities. In addition, the Office prepares certifications and applications for electronic surveillance under the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801 *et seq.*, and represents the United States before the United States Foreign Intelligence Surveillance Court. It processes requests for Attorney General authority to use FISA material in adjudicatory proceedings and assists in responding to challenges to the legality of FISA surveillances. *See* 28 C.F.R. § 0.33 a to c (1982).

1-2.107 Office of Information and Privacy

Managing Departmental responsibilities related to the Freedom of Information Act (FOIA) and the Privacy Act is the mission of the Office of Information and Privacy. The Office coordinates policy development and compliance government-wide for FOIA and by the Department for the Privacy Act. It also decides all appeals from denials by any Departmental unit of access to information under those Acts.

1-2.108 Office of Legal Counsel

The Assistant Attorney General in charge of the Office of Legal Counsel is responsible for:

- A. Preparing the formal opinions of the Attorney General, rendering opinions and legal advice to the various governmental agencies, and assisting the Attorney General in the performance of his/her functions as legal adviser to the President and as a member of the Cabinet;
- B. Preparing or making necessary revisions of Executive Orders and proclamations and advising the President with respect to their form and legality; performing the same functions with respect to regulations and similar matters that require the approval of the President or the Attorney General;
- C. Rendering opinions to the Attorney General and to the heads of the various organizational units of the Department on questions of law arising in the administration of the Department;
- D. Approving proposed orders of the Attorney General, and orders which require the approval of the Attorney General, as to form and legality and as to consistency and conformity with existing orders and memorandums;
- E. Resolving legal disputes between departments in the Executive branch;
- F. Coordinating the work of the Department in connection with United States participation in the United Nations and related international organizations;
- G. Advising the Attorney General, when requested, in connection with his/her review of decisions of the Board of Immigration Appeals and other organizational units of the Department;
- H. Consulting with the Director of the Office of Government Ethics regarding the development of policies, rules and regulations relating to ethics and conflicts of interest and approving certain blind trusts; and
- I. Performing special assignments from the Attorney General, Deputy Attorney General or Associate Attorney General. *See* 28 C.F.R. § 0.25; Executive Order No. 12146.

1-2.109 Office of Legislative Affairs

The following is a brief description of the Office of Legislative Affairs:

A. Origin. The Office of Legislative Affairs, (OLA), was established in the Department on February 2, 1973, by Attorney General Order No. 504-73 to be the coordinating center for all Department activity relating to legislation and Congress. This office was subsequently reorganized into Legislative and the Intergovernmental Affairs on January 24, 1984 by Attorney General Order No. 1054-84. Attorney General Order 1097-85 reestablished the Office of Legislative Affairs as an independent office on February 4, 1986.

B. Missions. The mission of the Office of Legislative Affairs is to advise appropriate components of the Department on the Congressional positions and preferences in the development of the Department's official policies with respect to legislation initiated inside the Department, by other parts of the Executive Branch, or by Members of Congress and to explain and advocate those policies with maximum effectiveness with the Congress. The Office also serves as the Attorney General's focal point for dealing with nominees, Congressional oversight, Congressional correspondence and Congressional requests for documents and access to Department employees.

C. Legislative Program. For each Congress, the Office of Policy Development contacts each component of the Department in the fall before the beginning of a Congress and requests recommendations and comments concerning legislative initiatives which should be undertaken. These inputs can take the form of specific legislative drafts with accompanying backup material or simply a description of the particular problem which needs a legislative solution. United States Attorneys are in excellent positions to make meaningful and helpful recommendations and their participation in the legislative program is encouraged. The Office of Legislative Affairs works closely with the Office of Policy Development in forming the Department's legislative program and is solely responsible for the articulation and enactment of that program by the Congress.

D. Congressional Appearances. The office coordinates the various appearances of Departmental witnesses before committees of the Congress. Often because of special knowledge or experience it will be desirable for a United States Attorney to be the Departmental witness on a particular subject. Such arrangements should be made through OLA. If any United States Attorney is contacted directly by a congressional committee or state or local legislative body concerning testimony, OLA should be immediately consulted. The office can be helpful, not only in dealing with the Congress, but also in obtaining coordination and clearance of formally prepared testimony. *See* 28 C.F.R. § 0.27.

Further policies and procedures on relations with the Congress are set forth in this Manual at 1-8.000.

1-2.110 Office of the Pardon Attorney

The Pardon Attorney assists the President in the exercise of his power under Article II, Section 2, clause 1 of the Constitution (the pardon clause). *See* Executive Order dated June 16, 1893 (transferring clemency petition processing and advisory functions to the Justice Department), the Rules Governing the Processing of Petitions for Executive Clemency (codified in 28 CFR Sections 1.1 *et seq.*), and 28 CFR Sections 0.35 and 0.36 (relating to the authority of the Pardon Attorney). The Pardon Attorney, under the direction of the Deputy Attorney General, receives and reviews all petitions for Executive Clemency (which includes pardon after completion of sentence, commutation of sentence, remission of fine and reprieve), initiates and directs the necessary investigations, and prepares a report and recommendation for submission to the President in every case. In addition, the Office of the Pardon Attorney acts as a liaison with the public during the pendency of a clemency petition, responding to correspondence and answering inquiries about clemency cases and issues. The following sets forth guidance on clemency matters.

1-2.111 Role of the United States Attorney in Clemency Matters

The Pardon Attorney routinely requests the United States Attorney in the district of conviction to provide comments and recommendations on clemency cases that appear to have some merit, as well as on cases that raise issues of fact about which the United States Attorney may be in a position to provide information. Occasionally, the United States Attorney in the district in which a petitioner currently resides also may be contacted. In addition, in cases in which the petitioner seeks clemency based on cooperation with the government, the Pardon Attorney may solicit the views of the United States Attorney in the district(s) in which the petitioner cooperated, if different from the district of conviction. While the decision to grant clemency generally is driven by considerations that differ from those that dictate the decision to prosecute, the United States Attorney's prosecutive perspective lends valuable insights to the clemency process.

The views of the United States Attorney are given considerable weight in determining what recommendations the Department should make to the President. For this reason, and in order to ensure consistency, it is important that each request sent to the district receive the personal attention of the United States Attorney. Each petition is presented for action to the President with a report and recommendation from the Department, and the recommendation by the United States Attorney is included in this report.

The United States Attorney can contribute significantly to the clemency process by providing factual information and perspectives about the offense of conviction that may not be reflected in the presentence or background investigation reports or other sources, e.g., the extent of the petitioner's wrongdoing and the attendant circumstances, the amount of money involved or losses sustained, the petitioner's involvement in other criminal activity, the petitioner's reputation in the community and, when appropriate, the victim impact of the petitioner's crime. On occasion, the Pardon Attorney may request information from prosecution records that may not be readily available from other sources.

As a general matter, in clemency cases the correctness of the underlying conviction is assumed, and the question of guilt or innocence is not generally at issue. However, if a petitioner refuses to accept guilt, minimizes culpability, or raises a claim of innocence or miscarriage of justice, the United States Attorney should address these issues.

In cases involving pardon after completion of sentence, the United States Attorneys is expected to comment on the petitioner's post-conviction rehabilitation, particularly any actions that may evidence a desire to atone for the offense, in light of the standards generally applicable in pardon cases as discussed in the following section. Similarly, in commutation cases, comments may be sought on developments after sentencing that are relevant to the merits of a petitioner's request for mercy.

In pardon cases, the Pardon Attorney will forward to the United States Attorney copies of the pardon petition and relevant investigative reports. These records should be returned to the Pardon Attorney along with the response. In cases involving requests for other forms of executive clemency (i.e., commutation of sentence or remission of fine), copies of the clemency petition and such related records as may be useful (e.g., presentence report, judgment of conviction, prison progress reports, and completed statement of debtor forms) will be provided.

The Pardon Attorney also routinely requests the United States Attorney to solicit the views and recommendation of the sentencing judge. If the sentencing judge is retired, deceased, or otherwise unavailable for comment, the United States Attorney's report should so advise. In the event the United States Attorney does not wish to contact the sentencing judge, the Pardon Attorney should be advised accordingly so that the judge's views may be solicited directly. Absent an express request for confidentiality, the Pardon Attorney may share the comments of the United States Attorney with the sentencing judge or other concerned officials whose views are solicited.

The United States Attorney may support, oppose or take no position on a pardon request. In this regard, it is helpful to have a clear expression of the office's position. The Pardon Attorney generally asks for a response within 30 days. If an unusual delay is anticipated, the Pardon Attorney should be advised when a response may be expected. If desired, the official views of the United States Attorney may be supplemented by separate reports

from present or former officials involved in the prosecution of the case. The United States Attorney may of course submit a recommendation for or against clemency even if the Pardon Attorney has not yet solicited comments from the district. The Pardon Attorney informs the United States Attorney of the final disposition of any clemency application on which he or she has commented.

1-2.112 Standards for Considering Pardon Petitions

In general, a pardon is granted on the basis of the petitioner's demonstrated good conduct for a substantial period of time after conviction and service of sentence. The Department's regulations require a petitioner to wait a period of at least five years after conviction or release from confinement (whichever is later) before filing a pardon application (28 CFR Section 1.2). In determining whether a particular petitioner should be recommended for a pardon, the following are the principal factors taken into account.

A. Post-conviction conduct, character, and reputation. An individual's demonstrated ability to lead a responsible and productive life for a significant period after conviction or release from confinement is strong evidence of rehabilitation and worthiness for pardon. The background investigation customarily conducted by the FBI in pardon cases focuses on the petitioner's financial and employment stability, responsibility toward family, reputation in the community, participation in community service, charitable or other meritorious activities and, if applicable, military record. In assessing post-conviction accomplishments, each petitioner's life circumstances are considered in their totality: it may not be appropriate or realistic to expect "extraordinary" post-conviction achievements from individuals who are less fortunately situated in terms of cultural, educational, or economic background.

B. Seriousness and relative recentness of the offense. When an offense is very serious, (e.g., a violent crime, major drug trafficking, breach of public trust, or white collar fraud involving substantial sums of money), a suitable length of time should have elapsed in order to avoid denigrating the seriousness of the offense or undermining the deterrent effect of the conviction. In the case of a prominent individual or notorious crime, the likely effect of a pardon on law enforcement interests or upon the general public should be taken into account. Victim impact may also be a relevant consideration. When an offense is very old and relatively minor, the equities may weigh more heavily in favor of forgiveness, provided the petitioner is otherwise a suitable candidate for pardon.

C. Acceptance of responsibility, remorse, and atonement. The extent to which a petitioner has accepted responsibility for his or her criminal conduct and made restitution to its victims are important considerations. A petitioner should be genuinely desirous of forgiveness rather than vindication. While the absence of expressions of remorse should not preclude favorable consideration, a petitioner's attempt to minimize or rationalize culpability does not advance the case for pardon. In this regard, statements made in mitigation (e.g., "everybody was doing it," or "I didn't realize it was illegal") should be judged in context. Persons seeking a pardon on grounds of innocence or miscarriage of justice bear a formidable burden of persuasion.

D. Need for Relief. The purpose for which pardon is sought may influence disposition of the petition. A felony conviction may result in a wide variety of legal disabilities under state or federal law, some of which can provide persuasive grounds for recommending a pardon. For example, a specific employment-related need for pardon, such as removal of a bar to licensure or bonding, may make an otherwise marginal case sufficiently compelling to warrant a grant in aid of the individual's continuing rehabilitation. On the other hand, the absence of a specific need should not be held against an otherwise deserving applicant, who may understandably be motivated solely by a strong personal desire for a sign of forgiveness.

E. Official recommendations and reports. The comments and recommendations of concerned and knowledgeable officials, particularly the United States Attorney whose office prosecuted the case and the sentencing judge, are carefully considered. The likely impact of favorable action in the district or nationally, particularly on current law enforcement priorities, will always be relevant to the President's decision. Apart from

their significance to the individuals who seek them, pardons can play an important part in defining and furthering the rehabilitative goals of the criminal justice system.

1-2.113 Standards for Considering Commutation Petitions

A commutation of sentence reduces the period of incarceration; it does not imply forgiveness of the underlying offense, but simply remits a portion of the punishment. It has no effect upon the underlying conviction and does not necessarily reflect upon the fairness of the sentence originally imposed. Requests for commutation generally are not accepted unless and until a person has begun serving that sentence. Nor are commutation requests generally accepted from persons who are presently challenging their convictions or sentences through appeal or other court proceeding.

The President may commute a sentence to time served or he may reduce a sentence, either merely for the purpose of advancing an inmate's parole eligibility or to achieve the inmate's release after a specified period of time. Commutation may be granted upon conditions similar to those imposed pursuant to parole or supervised release or, in the case of an alien, upon condition of deportation.

Generally, commutation of sentence is an extraordinary remedy that is rarely granted. Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action. A combination of these and/or other equitable factors may also provide a basis for recommending commutation in the context of a particular case.

The amount of time already served and the availability of other remedies (such as parole) are taken into account in deciding whether to recommend clemency. The possibility that the Department itself could accomplish the same result by petitioning the sentencing court, through a motion to reward substantial assistance under Rule 35 of the Federal Rules of Criminal Procedure, a motion for modification or remission of fine under 18 U.S.C. Section 3573, or a request for compassionate relief under 18 U.S.C. Section 3582(c)(1), will also bear on the decision whether to recommend Presidential intervention in the form of clemency. When a commutation request is based on the serious illness of the petitioner, transmission of the United States Attorney's response by facsimile in advance of mailing the original is always appreciated.

When a petitioner seeks remission of fine or restitution, the ability to pay and any good faith efforts to discharge the obligation are important considerations. Petitioners for remission also should demonstrate satisfactory post-conviction conduct.

On January 21, 1977, the President by Proclamation 4483 granted pardon to persons who committed nonviolent violations of the Selective Service Act between August 4, 1964 and March 28, 1973 and who were not Selective Service employees. Although a person who comes within the described class was immediately pardoned by the proclamation, the Pardon Attorney issues certificates of pardon to those within the class who were actually convicted of a draft violation and who make written application to the Department on official forms. When these applications are received by the Pardon Attorney, they are forwarded to the United States Attorney for the district in which the applicant was convicted to verify the facts of the case. The verification should be returned to the Pardon Attorney promptly.

1-2.114 Office of Professional Responsibility

The Department's Office of Professional Responsibility (OPR) which reports directly to the Attorney General, is responsible for overseeing investigations of allegations of criminal and ethical misconduct by the Department's attorneys and criminal investigators. The Counsel of Professional Responsibility heads the office

of 19 attorneys, whose primary role is to ensure that Departmental employees continue to perform their duties in accordance with the high professional standards expected of the nation's principal law enforcement agency.

Allegations against Departmental attorneys, including United States Attorneys and Assistant United States Attorneys, and criminal investigators involving violations of law, Departmental regulations, or Departmental standards of conduct are reported to the Office of Professional Responsibility. In the Counsel's discretion, the Office frequently conducts its own investigations into those allegations. The Office also may participate in or direct an investigation conducted by another component of the Department, or may simply monitor an investigation by an appropriate agency having jurisdiction over the matter. Allegations of misconduct against other types of employees are handled by the Office of the Inspector General.

The Counsel submits to the Attorney General an annual report reviewing and evaluating the Department's various internal inspection units. The Counsel makes recommendations to the Attorney General on the need for changes in policies or procedures that become evident during the course of the internal inquiries reviewed or initiated by the Office.

1-2.115 Office of Policy Development

The Office of Policy Development (OPD) is responsible for planning, developing, and coordinating the implementation of major policy initiatives of the Attorney General and the Administration. The office assures consistency and coordination of internal and interdepartmental policy initiatives or activities; researches, develops and helps implement a wide range of Departmental and Administration policy initiatives; reviews and analyzes legislation and other policy proposals and supports departmental efforts to secure enactment of those of special interest to the Department and the Administration; coordinates regulatory development and review of proposed rules; serves as liaison to OMB on regulatory matters; evaluates potential nominees for Federal judicial and United States Attorney appointment, and assists in preparation of nominees for Senate confirmation.

1-2.116 Office of Public Affairs

The Office of Public Affairs (OPA) is the principal point of contact for the Department of Justice with the public and the news media.

The Office is responsible for ensuring that the public is informed about the Department's activities and about the priorities and policies of the Attorney General and the President with regard to law enforcement and legal affairs.

The Office advises the Attorney General and other Department officials on all aspects of media relations and communications issues. The Office also coordinates the public affairs units of all Department component organizations.

The Office of Public Affairs prepares and issues Department news releases and frequently reviews and approves those issued by component agencies. It serves reporters assigned to the Department by responding to queries, issuing news releases and statements, arranging interviews and conducting news conferences.

The Office ensures that information provided to the news media by the Department is current, complete and accurate. It also ensures that all applicable laws, regulations and policies involving the release of information to the public are followed so that maximum disclosure is made without jeopardizing investigations and prosecutions, violating rights of individuals, or compromising national security interests.

Further policies and procedures on relations with the media are set forth in USAM 1-7.000.

1-2.117 Office of Community Oriented Policing Service (COPS)

As a result of the Violent Crime Control and Law Enforcement Act of 1994, the Attorney General created the Office of Community Oriented Policing Services (COPS) to implement the Administration initiative to hire 100,000 additional police officers and other policing programs. The COPS Office is dedicated to the goal of significantly improving the quality of life in neighborhoods and communities throughout the country, through partnerships with communities, law enforcement and other public and private organizations. The Office administers discretionary grants for the hiring and redeployment of officers to participate in community policing and for innovative community policing programs, and offers training and technical assistance to assist grantees with the implementation of community policing in their communities.

1-2.118 Community Relations Service

The Community Relations Service (CRS), established within the Department of Commerce by Title X of the Civil Rights Act of 1964 (42 U.S.C. § 2000g), was transferred to the Department of Justice by Reorganization Plan No. 1 of 1966. (*See Note*, 42 U.S.C. § 2000g). The activities of CRS are conducted and supervised by a Director, under the general supervision of the Attorney General and the direction of the Deputy Attorney General (28 C.F.R. § 0.30).

CRS is decentralized, with most of its operations conducted by personnel in its 10 regional offices, each of which is headed by a Regional Director. The function of CRS is to "provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin. ("National origin" has been construed to include foreign *or* American born ethnic groups). The basic techniques used by CRS are those of conciliation and mediation, the latter being a structured negotiation process similar to labor mediation. CRS may enter a dispute by request of an interested official or party or upon its own motion. Its jurisdiction to enter is based upon the existence of a dispute involving an alleged discriminatory practice, and does not require independent federal "case or controversy" jurisdiction.

The services of CRS are frequently utilized by federal courts as an alternative to resolution of disputes by litigation. Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000a-3(d)) provides specific authority and procedures for the utilization of CRS' services in public accommodation suits, and its mediation services have been utilized a number of times by district courts. United States Attorneys' offices may wish to consider referral to CRS of disputes concerning alleged racial or ethnic discrimination which, for whatever reasons, are not appropriate for litigation.

CRS operates under a statutory requirement of confidentiality, and United States Attorneys' offices are required from time to time to defend this confidentiality from litigants seeking testimony or documents from CRS.

1-2.119 Executive Office for United States Attorneys

The Director of the Executive Office for United States Attorneys provides general executive assistance and supervision to the 94 Offices of the United States Attorneys. As such, the office is responsible for:

- A. Evaluating the performance of the United States Attorneys' offices (USAOs), making appropriate reports and inspections, and taking corrective action where indicated;
- B. Coordinating and directing the relationships of the USAOs with other organizational units of the Department;
- C. Publishing the *United States Attorneys' Manual* and the *United States Attorneys' Bulletin* for the internal guidance of the USAOs and other organizational units of the Department.
- D. Supervising the operations of the Office of Legal Education (comprised of the Attorney General's Advocacy Institute and the Legal Education Institute) which develops, conducts and authorizes the training of all federal legal personnel. *See* USAM 3-6.000.

- E. Coordinating and directing the LECC and Victim/Witness Program within each United States Attorney's Office, and providing speakers, materials, and any other technical assistance for LECC/VW related functions; *see* USAM 3-7.000.
- F. Providing the Attorney General's Advisory Committee of United States Attorneys with staff assistance and funds that are reasonably necessary to carry out the Committee's responsibilities. *See* 28 C.F.R. § 0.22, and USAM 3-2.000.
- G. Providing general direction and supervision of the management and policy activities of the United States Attorneys' financial litigation programs, including the establishment of policy and procedures for debt collection activities, affirmative civil enforcement and bankruptcy litigation, litigative and technical support, training, publication of a newsletter, coordination and implementation of legislative initiatives and the establishment of guidelines, advice, and other guidance;
- H. Establishing, coordinating and interpreting policy, guidelines, and procedures on criminal fine collection issues;
- I. Providing general legal interpretations, opinions, and advice to United States Attorneys in areas of recusals, cross-designations, outside activities, representation, allegations of misconduct, adverse actions, grievances, labor relations, and ethical and conflict of interest questions;
- J. Providing general support to the United States Attorneys in matters involving Assistant United States Attorney and Special Assistant United States Attorney appointments;
- K. Providing overall administrative management oversight, technical and direct support to the United States Attorneys in the program areas of facilities management and security programs;
- L. Providing technical, administrative, design and maintenance support in the area of video telecommunications to the USAOs;
- M. Analyzing, designing, and providing automated services and systems in support of the litigation missions and of selected administrative functions of the USAOs.
- N. Arranging for the acquisition and installation of integrated office automation systems in the Offices of the United States Attorneys;
- O. Providing centralized leadership, coordination, and evaluation of all equal employment efforts throughout the USAOs--administering both the Affirmative Action and Complaints Processing Programs; and
- P. Providing information and guidance to USAOs on pending legislation; preparing testimony and background for Congressional oversight and appropriations hearing; and responding to inquiries from member of Congress and private citizens.

A complete discussion on the offices within the Executive Office of United States Attorneys is set forth in Title 3 of this Manual.

1-2.120 Executive Office for United States Trustees/United States Trustee Program

The mission of the U.S. Trustees is to supervise the administration of bankruptcy cases, leaving traditional judicial functions as the sole concern of bankruptcy judges. Section 408 of the Bankruptcy Reform Act of 1978 (92 Stat. 2549, 2686-87), established the U.S. Trustee program as a pilot effort in 10 geographical areas, encompassing 18 federal judicial districts. In 1986 Congress expanded the Program nationwide as Public Law No. 99-554; 100 Stat. 3088 (October 27, 1986).

The U.S. Trustee has responsibility in four of the five types of bankruptcy proceedings defined under Title 11 of the U.S.Code (Bankruptcy Code). These are (1) proceedings under chapter 7 in which the assets of the

debtor are liquidated; (2) reorganization proceedings under chapter 11 which provides a mechanism for rehabilitation of the business debtor; (3) adjustment of debts of a family farmer with regular annual income under chapter 12; and (4) adjustment of debts of an individual with regular income under chapter 13, pursuant to pursuant to which an individual can discharge debts by arranging for payments over a period of time, usually three years.

The responsibilities of the U.S. Trustees are set forth in 28 U.S.C. § 586. They include appointing and supervising the performance of private trustees in individual cases; appointing and encouraging active participation by creditors' committees in chapter 11 reorganization cases; monitoring the operations of debtors in possession in chapter 11 cases to ensure that operating expenses, including taxes, are being paid on a current basis; appearing before the court to move for dismissal or conversion of cases, or the appointment of a trustee or an examiner, as appropriate; generally serving as watchdogs of the bankruptcy system to prevent abuses and, by referring criminal violations of federal bankruptcy laws to the United States Attorneys, enforcing those laws.

The Attorney General is responsible for appointment of U.S. Trustees and supervising the Program's efforts. The Program is headed by a Director. The 11 U.S. Trustees carry out the Program's responsibilities in their particular regions. In turn, suboffices are headed by an Assistant U.S. Trustee, who reports to the U.S. Trustee.

1-2.121 International Criminal Police Organization-United States National Central Bureau (INTERPOL-USNCB)

The INTERPOL-USNCB addresses the problem of international criminal activity and the movement of international criminals and individuals who are members of organized groups, such as terrorists, who have committed criminal acts across international borders affecting law enforcement capabilities within the United States and in the 175 other member countries of INTERPOL. The following sets forth guidance under INTERPOL-USNCB.

A. Authority. The INTERPOL-USNCB facilitates international law enforcement cooperation as the United States representative to the International Criminal Police Organization (INTERPOL or I.C.P.O.), on behalf of the Attorney General, who, pursuant to 22 U.S.C. § 263a, maintains the United States' membership in INTERPOL, which is an intergovernmental organization of 176 member countries, headquartered in Lyon, France.

B. Functions pursuant to 28 C.F.R. § 0.34. See DOJ Organization and Functions Manual at 1.

C. Other Limitations and Authorities. INTERPOL functions within the limits of the existing laws in each of the member countries and the INTERPOL Constitution, and in accord with the United Nations "Universal Declaration of Human Rights." A Headquarters Agreement between the INTERPOL General Secretariat and the French Government provides for a Supervisory Board of five international judges and experts to review any complaints concerning data contained within the organization's archives. The annual meetings of the INTERPOL General Assembly of all member countries also have approved written guidelines for handling of information by the General Secretariat and by the member countries' National Central Bureaus.

D. Law Enforcement Agency Representation. The INTERPOL-USNCB operates through well-established cooperative efforts with federal and state agencies. See DOJ Organization and Functions Manual at 2.

E. Types of Criminal Cases Handled by INTERPOL-USNCB. The INTERPOL-USNCB handles requests for investigations including serious and sophisticated crimes of murder, violent crimes, firearms and explosive violations, theft, large-scale narcotics violations, large-scale fraud and counterfeiting, immigration violations, and the location and apprehension of international fugitives, involving arrests and extraditions to the countries where the crimes were committed.

The requests for INTERPOL assistance also cover criminal record history information and identification checks; license checks; tracing weapons; identifying and tracing international stolen and forged art-works;

completing investigations of an international nature concerning lost and stolen travelers checks and credit cards; tracing license plates and registrations on vehicles believed to be stolen or used in the commission of a crime; locating and interviewing witnesses in the United States and abroad; circulation of INTERPOL International Wanted Notices on fugitives to all U.S. border points; and humanitarian matters, including missing persons cases.

The INTERPOL-USNCB maintains a computerized data base of all investigative cases in the INTERPOL Case Tracking System (ICTS). The organization also maintains computerized records of all INTERPOL International Notices on wanted persons, fugitives and recidivists in the INTERPOL-USNCB portion of the Treasury Enforcement Communications Systems (TECS) data base, which is operated by the U.S. Department of the Treasury.

F. Provisional Arrests and International Extradition Requests. INTERPOL Wanted Notices on wanted persons and fugitives are circulated to all United States border points, through the U.S. Department of Treasury's Treasury Enforcement Communications Systems (TECS). Red, Blue, or Green Notices, which are discussed in the DOJ Organization and Functions Manual at 3, may serve as the basis for exclusion of the subject from entry into the United States.

The INTERPOL communications channel is a direct police-to-police link and, therefore, it is faster than diplomatic channels. The international law enforcement community will arrest a subject in a foreign country, based upon the receipt, through INTERPOL channels, of information that a provisional arrest warrant and/or extradition request has been initiated through diplomatic channels.

G. Divisions Within INTERPOL-USNCB. These are the Criminal Investigative Division, the Financial Fraud Division, the Alien/Fugitive Division, the Drug Investigations Division, the Drug Investigations Division, and the State Liaison Division. Further information on these divisions can be found the DOJ Organization and Functions Manual at 4.

H. Eligibility to use services of INTERPOL-USNCB. All United States federal, state and local law enforcement agencies, including investigation and prosecution authorities, are eligible to make requests for assistance from the INTERPOL-USNCB. However, specific guidelines have been established by the INTERPOL-USNCB before responding to requests for investigative information, so as to avoid any inappropriate release of information which may be in conflict with various federal laws. Use of the facilities of the INTERPOL-USNCB by approximately 20,000 state and local law enforcement agencies is essentially the only medium, in the absence of federal jurisdiction over the case, that state and local police have for securing the assistance of a foreign police force. Efforts to increase awareness among the state and local law enforcement communities of the service available through the INTERPOL-USNCB are an on-going activity of this organization.

I. Request for Enforcement Assistance or Information. Before the INTERPOL-USNCB may respond to a request for law enforcement assistance, all requests must include the type of offense and certain other information to reflect that it is a specific criminal investigation, including the type of criminal investigation or other law enforcement purpose, and the relationship of the subject to the investigation. For further information, see DOJ Organization and Functions Manual at 5.

1-2.122 Office of Intergovernmental Affairs

The Office of Intergovernmental Affairs serves as the Attorney General's representative to state and local governments and the advocacy groups which represent them. The Office also plays a key role in policymaking, as it provides guidance to the Attorney General and other Department officials on issues that impact state and local communities.

Currently staffed by five attorneys, the Office's Director reports to the Attorney General, Deputy Attorney General or Associate Attorney General as the case may be, and provides advice concerning many aspects of the

decisions these officials makes. Intergovernmental Affairs staff serve as Justice Department representatives in Washington and around the country when issues arise concerning states, localities, or other groups. The Office also disseminates information to local prosecutors, law enforcement officials, and governmental bodies regarding Department issues of concern to them.

1-2.200 Divisions

The organization and functions of the Antitrust Division (Title 7), Civil Division (Title 4), Civil Rights Division (Title 8), Criminal Division (Title 9), Environment and Natural Resources Division (Title 5), and Tax Division (Title 6) are contained in separate titles of the United States Attorneys' Manual. A description of the organization and function of the Justice Management Division follows.

1-2.207 Justice Management Division

The Justice Management Division (JMD) is the principal organizational unit responsible for management and administrative support in the Department of Justice. Under the direction of the Assistant Attorney General for Administration (AAG/A), JMD provides Department-wide policy guidance for management, administration and organizational matters, and direct administrative services to the Department's offices, boards, divisions (OBDs) and, to a limited extent, its bureaus.

The AAG/A provides advice to senior management officials relating to basic Department policy for budget and financial management, personnel management and training, equal employment opportunity, automated data processing (ADP), telecommunications, security and all matters pertaining to organization, management and administration. Specifically, the AAG/A and JMD:

- A. Act as the Attorney General's principal management and administrative resource in support of Department goals and operations.
- B. Establish administrative policies, programs and procedures for the Department to ensure the effective and efficient achievement of the Department's mission.
- C. Review Department activities to ensure compliance with Federal laws and regulations and Department directives and policies.
- D. Provide management, financial and administrative assistance, including the operation of central administrative facilities and services.

As part of its responsibilities, JMD represents the offices of the Attorney General, and the Deputy Attorney General on organizational, management and administrative matters with the other principal components of the Department and other Federal agencies, including such central management agencies as the Office of Management and Budget, the Office of Personnel Management, the General Services Administration and the General Accounting Office.

For further information on the functions assigned to the AAG/A, see DOJ Organizations and Functions Manual at 6. For further information on JMD Individual Staff Responsibilities, see DOJ Organizations and Functions Manual at 7.

1-2.300 Bureaus

Sections 1-2.301 through 1-2.312 outline the organization and functions of the Bureau of Prisons, Drug Enforcement Administration, Federal Bureau of Investigation, Immigration and Naturalization Service, Office of Justice Programs, and the United States Marshals Service.

1-2.301 Bureau of Prisons

The mission of the Bureau of Prisons is to protect society by confining offenders in the controlled environments of prison and community based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law abiding citizens. It has the responsibility for the management of federal penal, correctional and detention facilities.

The Director of the Bureau of Prisons directs its activities, reports directly to the Deputy Attorney General, and is under the general supervision of the Attorney General (18 U.S.C. § 4041, 28 C.F.R. §§ 0.95 to 0.99). The Director has the authority to promulgate rules governing the control and management of federal penal, correctional and detention facilities, and to provide for the classification, government, discipline, treatment, care, rehabilitation and reformation of inmates confined therein (A.G. Order No. 675-76, 41 *Fed.Reg.* 56802, (December 30, 1976)).

When it is necessary to call an inmate as a witness or defendant in a criminal matter, the Assistant United States Attorney may obtain the inmate's appearance in one of two ways: by written request to the U.S. Marshal, pursuant to 18 U.S.C. Section 1621(d), or by obtaining a writ of habeas corpus *ad testificandum* or *ad prosequendum* from the appropriate court. The U.S. Marshals Service will make the necessary arrangements to serve the writ and transport the inmate to court.

Occasionally, an Assistant United States Attorney involved in the investigation of a criminal matter may wish to use an inmate in an undercover operation. Prior to doing so, the Assistant must contact the Bureau of Prisons' Office of Intelligence and the Office of Enforcement Operations in the Criminal Division of the Department of Justice for authorization.

From time to time inmates or their counsel will seek a furlough or escorted trip away from custody for some situation that they feel warrants a release from custody. The BOP considers a furlough as an authorized absence from an institution by an inmate who is not under escort by a Bureau of Prisons staff member, a U.S. Marshal, or other Federal or State agent. 28 C.F.R. Section 570.30. The authority to approve furloughs has been delegated to the warden or acting warden of the facility in which the inmate is held, not to the Federal Courts or the Office of the United States Attorney. *See* 18 U.S.C. Sections 3622 and 28 CFR Section 570.32. The regulations governing escorted trips are found at 28 CFR Section 570.40 *et seq.*

The Bureau's legal authority to monitor inmate calls is found at 18 U.S.C. Section 2510(5)(a). During period review of monitored calls for institution security, Bureau staff may detect criminal activity by federal inmates. Staff may turn that initial information over to the appropriate federal or state authorities for law enforcement action. If a local investigation is begun by outside law enforcement authorities, any subsequent telephone monitoring information may only be disclosed with proper legal authorization, e.g., search warrant, grand jury subpoena, subpoena issued by the court, or intercept order as authorized by statute. In no case may prison officials honor requests for monitoring of future calls without a wiretap or communication intercept order. When an Assistant United States Attorney needs to subpoena these telephone conversations for evidentiary purposes, he or she should direct that subpoena to the Warden of the institution. The United States Attorney's Office or law enforcement agency investigating the case will be asked to furnish funds to replace the master reels that hold the recorded conversations.

For further information on the Bureau of Prisons, see the DOJ Organizations and Functions Manual at 8.

1-2.302 Drug Enforcement Administration

The mission of the DEA is to enforce the controlled substances laws and regulations of the United States and to bring to the criminal and civil justice system of the United States or any other competent jurisdiction, those organizations, and principal members of organizations, involved in the growing, manufacture, or distribution of controlled substances appearing in or destined for illicit traffic in the United States; and to recommend and

support nonenforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets. In carrying out its mission, the DEA is the lead agency responsible for the development of overall federal drug enforcement strategy, programs, planning, and evaluation. The DEA's primary responsibilities include:

- A. Investigation and preparation for prosecution of major violators of controlled substances laws operating at interstate and international levels;
- B. Management of a national drug intelligence system in cooperation with Federal, State, local and foreign officials to collect, analyze, and disseminate strategic and operational drug intelligence information;
- C. Seizure and forfeiture of assets derived from, traceable to, or intended to be used for illicit drug trafficking.
- D. Enforcement of the provisions of the Controlled Substances Act as they pertain to the manufacture, distribution, and dispensing of legally produced controlled substances.
- E. Coordination and cooperation with federal, state and local law enforcement officials on mutual drug enforcement efforts and enhancement of such efforts through exploitation of potential interstate and international investigations beyond local or limited federal jurisdictions and resources.
- F. Coordination and cooperation with other federal, state and local agencies, and with foreign governments, in programs designed to reduce the availability of illicit abuse-type drugs on the United States market through non-enforcement methods such as crop eradication, crop substitution, and training of foreign officials.
- G. Responsibility under the policy guidance of the Secretary of State and U.S. Ambassadors, for all programs associated with drug law enforcement counterparts in foreign countries.
- H. Liaison with the United Nations, Interpol, and other organizations on matters relating to international drug control programs.

1-2.303 Federal Bureau of Investigation

The Federal Bureau of Investigation (FBI), was established in 1908. It is the principal investigative arm of the Department of Justice (DOJ). Title 28, U.S.C. Section 533, which authorizes the Attorney General to "appoint officials to detect...crimes against the United States," and other federal statutes give the FBI the authority and responsibility to investigate specific crimes.

At present, the FBI has investigative jurisdiction over violations of more than 200 categories of federal crimes. It is also authorized to investigate matters where no prosecution is contemplated. For example, under the authority of several Executive Orders, the FBI conducts background security checks concerning nominees to sensitive government positions. In addition, the FBI has been directed or authorized by Presidential statements or directives to obtain information about activities jeopardizing the security of the Nation.

Information obtained through an FBI investigation is presented to the appropriate United States Attorney or DOJ official, who decides if prosecution, or other action, is warranted. Top priority has been assigned to the five areas that affect society the most: counterterrorism, drugs/organized crime, foreign counterintelligence, violent crimes, and financial crimes.

The FBI is also authorized to provide other law enforcement agencies with cooperative services, such as fingerprint identification, laboratory examinations, police training, Uniform Crime Reports, and the National Crime Information Center.

The FBI conducts investigations under Executive Order No. 10450, effective May 28, 1953, *as amended*, which prescribes procedures for the administration of the federal employees security program covering all civilian employees and applicants in the Executive Branch of the government. The FBI also conducts applicant-type

investigations for certain government agencies as authorized under Presidential Executive Orders, Departmental Orders, and statutes enacted by Congress.

Basic FBI Policies. The FBI is a career service; its employees are selected without regard to political affiliation and political considerations.

The FBI is a fact-finding and reporting agency only. The results of FBI investigations are furnished without recommendation or conclusion to the United States Attorney's Office or the Department for the determination of appropriate action. The decision for action to be taken is the sole responsibility of the United States Attorneys or the Department, and Special Agents are not authorized to express an opinion as to such matters. This policy which prohibits the FBI from expressing an opinion, conclusion, or recommendation extends to investigations of applicants for governmental positions.

For further information on the FBI's organizational structure and services, see the DOJ Organizations and Functions Manual at 9. For a list of federal matters investigated by the FBI, see the DOJ Organizations and Functions Manual at 10. For further information on FBI cooperative and information services, see the DOJ Organizations and Functions Manual at 11.

Services of the FBI Laboratory. Examples of the types of examinations the Laboratory is equipped to make are as follows: Art, artists' conceptions, biochemical, chemical, biological (including DNA analysis), facial aging, skull reconstruction, video tape analysis, coins, crime scene diagrams, cryptanalytical, document, drug records analysis, explosives and their residues, extortionate credit records, fibers, firearms identification and ammunition, gambling records and paraphernalia, glass, graphics, gunpowder, handwriting and handprinting, hairs, latent fingerprints, metallurgical, mineralogical, neutron activation analysis, number restoration, paints, pharmacological, photographic, photography enhancements, photogrammetry, plastics, polygraph, printing, rare books, serological, shoe prints, rare stamps, tire treads, toolmarks, toxicological, trace evidence, two and three dimensional demonstrative evidence, visual aids, high resolution aerial photography, still and video image processing. Also the Laboratory has the capability of analyzing many commercial products.

Evidence should be sent directly to the FBI Laboratory in Washington, D.C., for examination. Ask the local office of the FBI for assistance in the proper method of packing and transmitting evidence, and obtain the services of FBI laboratory experts when testimony is needed in connection with the prosecution of a case in which the United States is a party in interest. A request to the Department for authority to obtain the services of such experts from other sources should not be submitted.

When a United States Attorney's Office requires the expert testimony of a fingerprint examiner, the request should be made for the *actual* day on which it is anticipated the testimony is required. Likewise, the CJIS Division should be promptly notified of any change in the examiner's court appearance to insure that his/her services may be fully utilized. Similarly, when a United States Attorney's Office requires identification records for trial, such requests should be made to the CJIS Division at the earliest possible date to insure their availability.

When expert lab testimony is desired for a trial, the court appearance of the FBI laboratory examiner should be requested for the actual date on which the anticipated testimony will be needed rather than for the date on which the trial is to begin. It is realized that the exact date on which the examiner's testimony will be desired cannot always be determined. However, if it can be expected that such testimony will not be needed on the first day of the trial but rather on some subsequent day of the trial, the Laboratory should be so advised in order that every effort may be made to insure that the examiner's absence from FBI Headquarters is held to a minimum. Requests for testimony are handled by the FBI laboratory in the order in which they are received. Therefore, to insure the presence of an expert at a trial, his/her appearance should be requested as far in advance as possible.

FBI Reports. In those criminal matters where decisions as to prosecution are made by the United States Attorney, the reports of investigations are submitted directly to the United States Attorney's Office by the local field office of the FBI. These reports are confidential. They are not to be furnished to persons outside the Department except pursuant to court order as authorized or as required by statute, regulations and Supplement

No. 4 (Revised), Departmental Order No. 3464 dated January 13, 1953. The procedures for the production and/or disclosure of FBI material and/or information in response to demands for the same are set forth in Attorney General Order 501-73 dated January 18, 1973 (28 C.F.R. § 16.21 *et seq.*).

Under Departmental instructions, there is to be set forth in the reports submitted by FBI agents the specific reason of the United States Attorney or the Assistant United States Attorney as to why prosecution is declined. These reasons are set forth for the Department's information and copies of the reports containing such decisions and opinions of the United States Attorney and his/her staff are furnished to the office of the United States Attorney, as well as to the Department. For a list of abbreviations used in FBI reports, see the DOJ Organization and Functions Manual at 12.

1-2.304 Immigration and Naturalization Service

The Commissioner of the Immigration and Naturalization Service (INS) administers and enforces the Immigration and Nationality Act (INA) (8 U.S.C. § 1103) and all other laws relating to immigration (including admission, exclusion and deportation), naturalization and nationality, subject to the limitations of Section 103 of the INA Act. *See* 28 C.F.R. § 0.105(a).

The Commissioner exercises and performs any of the authority, functions, or duties conferred or imposed upon the Attorney General by any of the above-mentioned laws, including the authority to issue regulations. *See* 28 C.F.R. § 0.105(b).

The INS investigates alleged violations of the immigration and nationality laws, and makes recommendations for prosecutions when deemed advisable. *See* 28 C.F.R. § 0.105(d).

The INS arrests, detains, and removes from the United States inadmissible and deportable aliens, including aliens convicted of criminal offenses and aliens involved in terrorism. *See* 8 U.S.C., Section 1182, 1225, 1226, 1227, 1251, 1252, 1253.

The INS investigates and assesses civil money penalties against employers who knowingly hire aliens who are authorized to work. *See* 8 C.F.R. 274a *et seq.* The INS also assesses civil money penalties against individuals who create, use or traffic in fraudulent documents.

The INS patrols the borders of the United States to prevent the entry of aliens into the United States in violation of law. *See* 28 C.F.R. § 0.105(d). The INS also inspects arriving aliens at domestic ports-of-entry and investigates the smuggling of aliens into the United States. *See* 8 U.S.C., Sections 1103, 1225.

The INS supervises naturalization work in the specific courts designated by Section 310 of the INA to have jurisdiction in such matters, including the requiring of accountings from the clerks of such courts for naturalization fees collected, investigation through field officers of the qualifications of citizenship applicants, and representation of the government in all court hearings. *See* 28 C.F.R. § 0.105(e).

Other major functions of the INS include providing citizenship textbooks and other services for the preparation of candidates for naturalization; registering and fingerprinting aliens in the United States; preparing reports on private bills pertaining to immigration matters; and directing members of the INS assigned to commercial aircraft to perform the functions of a deputy marshal as a peace officer. *See* 28 C.F.R. § 0.105(f) *et seq.*

1-2.305 The Office of Justice Programs

The Office of Justice Programs (OJP) was created by the 1984 Amendments to the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3711, *et seq.*) to provide federal leadership in developing the nation's capacity to prevent and control crime and delinquency, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. OJP's senior management

team -- comprised of the Assistant Attorney General (AAG), two Deputy Assistant Attorneys General (DAAG), and five Bureau Heads -- works together with dedicated line staff to carry out this mission and to meet the agency's four goals:

- A. To identify, define, and promote the understanding of critical crime, delinquency, and justice issues.
- B. To develop, support, and evaluate promising and innovative strategies for ensuring safe and just communities and assisting victims of crime.
- C. To build partnerships that strengthen federal, state, and local government and community capacities.
- D. To ensure a fair workplace that maximizes each employees's contribution to the overall mission and goals of OJP.

The Assistant Attorney General is responsible for setting policy, ensuring that OJP policies and programs reflect the priorities of the President, the Attorney General, and the Congress, and coordinating the work of OJP and its five program bureaus. Two Deputy Assistant Attorneys General assist the OJP/AAG in carrying out these responsibilities.

Each OJP Bureau is headed by a presidentially appointed Director or Administrator. The Director of the Bureau of Justice Assistance (BJA) is responsible for administering DOJ's primary criminal justice grant agency. BJA provides funding, training, and technical assistance to state and local governments to combat violent and drug-related crime and help improve the criminal justice system. It also administers the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3750). For further information on the BJA, see the DOJ Organization and Functions Manual at 13.

Other OJP Bureaus include the Bureau of Justice Statistics (BJS), the National Institute of Justice (NIJ), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office for Victims of Crime (OVC). Further information on these bureaus can be found in the DOJ Organization and Functions Manual at 14. For information on OJP Crime Act Offices, see the DOJ Organization and Functions Manual at 15. For information on other OJP offices, see the DOJ Organization and Functions Manual at 16.

1-2.306 U.S. Marshals Service -- Generally

The Director of the U.S. Marshals Service directs and supervises all activities of the Service, including the following:

- A. The execution of federal arrest, parole violation, custodial and extradition warrants as directed; investigative responsibility for federal escapes, federal bond default, federal parole and probation violations, warrants, and mandatory release violation warrants, except for certain FBI cases.
- B. The service of all civil and criminal process emanating from the federal judicial system including the execution of lawful writs and court orders;
- C. The provision for the health, safety, and welfare of government witnesses and their dependents;
- D. The administration and implementation of courtroom security requirements for the federal judiciary;
- E. The protection of federal jurists, court officers, and other threatened persons in the interests of justice where criminal intimidation impedes the functioning of the federal judicial process or other official proceedings;
- F. The provision of assistance in the protection of federal property and buildings;
- G. The direction and supervision of a training school for U.S. Marshals Service personnel;
- H. The disbursement of appropriated funds, *including the Department of Justice Assets Forfeiture Fund*, to satisfy government obligations incurred in the administration of justice;

- I. The maintenance of custody and control of money and property seized pursuant to 18 U.S.C. § 1955(d), and all other money and property seized for forfeiture, except where the seizure was made by the Department of Treasury, when seized property is turned over to the U.S. Marshals Service, (*see* USAM 1-2.308).
- J. The receipt, processing and transportation of prisoners held in the custody of a marshal or transported by the U.S. Marshals Service under cooperative or intergovernmental agreements;
- K. The sustention of custody of federal prisoners from the time of their arrest by a marshal or their remand to a marshal by the court, until the prisoner is committed by order of the court to the custody of the Attorney General for the service of sentence, otherwise, released from custody by the court, or returned to the custody of the U.S. Parole Commission or the Bureau of Prisons. *See* 28 C.F.R. § 0.111(a) to (k).
- L. The analysis of threats to United States Attorneys, federal judges, other officers of the court, court facilities, prisoners in Marshal's custody, and U.S. Marshals Service personnel, (*see* USAM 1-2.309).
- M. Contracting with the proper authorities of any state, territory or political subdivision thereof, for the imprisonment, subsistence and care of federal prisoners under the custody of the U.S. Marshals including providing funding for such physical improvements as may be required in exchange for guaranteed federal prisoner bed space.
- N. The deputation of selected officers or employees of the United States or local law enforcement officers in furtherance of federal law enforcement missions, (*see* USAM 1-2.310).

1-2.307 U.S. Marshals Service -- Responsibilities to United States Attorneys

A. Evidence. Many cases, both criminal and civil, involve large or substantial amounts of material held for evidence. It is the general policy of the U.S. Marshals Service not to accept other federal agencies' seized property which is to be used as evidence. However, in those situations where these items are turned over to the U.S. Marshals Service, they must be properly marked as evidence and accompanied by a memorandum.

B. Key Witness Protection. Under Department of Justice Order No. 2110-42, dated July 19, 1983, procedures are established for protecting witnesses to organized crime and other serious offenses in appropriate circumstances. Requests for protection are made by an Assistant United States Attorney through the United States Attorney to the Director of Enforcement Operations, Criminal Division, who will forward approved requests to the U.S. Marshals Service.

A person being considered for protections under the program must not be given representations or promises that cannot be met in accordance with established guidelines. For this reason, it is essential that immediate contact be made with the U.S. Marshal's Office when protection is being considered for a witness so that a witness security specialist may be present at any interviews in which details of protection are being considered. *See* USAM 9-21.000 *et seq.*

C. Writs of Habeas Corpus. When preparing a case for trial, it is often necessary to issue a writ of habeas corpus for a defendant or a witness who is in federal or state custody. The Assistant United States Attorney preparing the case for trial must give sufficient time for the marshal to execute these writs. Fourteen days is normally considered to be sufficient time. If there is not sufficient time before trial to move the required prisoner through usual channels, it is costly to the marshal to move a single prisoner for a long distance by air. The prisoner can be moved substantially less expensively and more securely if adequate notice is given than if such notice is not given.

The Marshal will honor a written request from the Assistant United States Attorney for the production of federal prisoners from federal institutions for prosecution or testimony without the need for a writ of habeas corpus. The Assistant United States Attorney's written request must be approved by a supervisory Assistant United States Attorney. A writ of habeas corpus must still be obtained for the production of federal prisoners

serving sentences in state or local jails, for state prisoners in state or local institutions, and for state prisoners in federal institutions.

D. Criminal Subpoenas. After trial date has been set and while the Assistant United States Attorney is completing the case for trial, the marshal, in most cases, will serve subpoenas on all prospective witnesses. As much time as possible should be given in the event there is difficulty locating those persons subpoenaed. The Assistant United States Attorney should ensure that the case agents have updated addresses of witnesses to be subpoenaed. In many cases, a matter does not come to trial for a year or more after the investigation; if these matters are not updated, time is lost and a key witness may not be located in time for trial.

E. Sequestered Juries. If the Assistant United States Attorney expects to move for sequestration of a jury or has knowledge that opposing counsel intends to do so, he/she should make this fact known to the U.S. Marshal's Office as soon as possible so that all necessary arrangements for lodging and meals may be made in advance.

F. Court Security. The Marshal has the responsibility for security in federal courtrooms and immediate surrounding areas. If a threat to a federal prosecutor, judge, juror, or other court-related individual becomes known it should be immediately reported to the U.S. Marshal's Office so that a threat assessment and possible subsequent protective services can be implemented when appropriate. If a controversial, high risk or publicized trial is scheduled, the fact should be made known to the Marshal's Office so that the security problem may be assessed and proper security arrangements made for safely conducting the trial.

1-2.308 U.S. Marshals Service -- Asset Seizure and Forfeiture

Marshals Service responsibilities in the management of seized and forfeited property have expanded under the National Asset Seizure and Forfeiture (NASAF) Program. The program emphasizes pre-seizure planning to minimize post-seizure management problems. It is especially important that NASAF personnel be consulted prior to major seizures of real property and businesses, and where the execution of a warrant *in rem* will be simultaneous with the seizure.

A. Seized Cash.

- All seized cash currently held by United States Attorneys as evidence is to be delivered to the United States Marshals Service for deposit into the Seized Asset Deposit Account (15X6874).
- The deposit of future cases must occur within 60 days after seizure or within 10 days following an indictment, whichever comes first.
- Exceptions to the requirement to deposit seized cash must be approved by the Assistant Attorney General, Criminal Division.
- Exceptions will be considered only when the cash would serve as a significant independent tangible evidentiary purpose such as the existence of fingerprints or drug residue.
- United States Attorneys may grant exceptions on the retention of cash for evidentiary purposes when the amount of the seizure is less than \$5,000.00.

B. Forfeited Cash. Forfeited cash after all appeals processes are completed, will be transferred to the Department of Justice Assets Forfeiture Fund. In addition, the proceeds from the sale of any other forfeited asset (except where the Department of Treasury seized the property) will be deposited to the Justice Assets Forfeiture Fund.

1-2.309 U.S. Marshals Service -- Procedures Relative to Threats Against United States Attorneys and other Officials

When a threat is made against a United States Attorney, Assistant United States Attorney, or any other Department of Justice official, or against court officials (or an immediate family member, as a result of the individual's official position), the following policy and procedures relative to protection will be observed:

A. When a threat is initially received, the U.S. Marshal's Office and the local office of the Federal Bureau of Investigation (FBI) are to be notified immediately. (A threat received by either agency will be reported to the other, based upon a policy of cross-notification.) Security is the responsibility of the Marshals Service; investigation of the violation is the responsibility of the FBI.

B. The appropriate security response will be made by the district marshal to ensure the safety of the individual threatened. Security procedures range from escorting the threatened individual to and from work to providing around-the-clock physical protection for the principal and family members. In extreme cases, the victim(s) of the threat may have to be temporarily relocated. U.S. Marshals have the authority to provide such protection for up to seventy-two hours, after which U.S. Marshals Service Headquarters approval is required for continuance of the detail.

C. In the case of government attorneys, the Executive Office for United States Attorneys will be notified of the threat by the United States Attorney's Office. The Deputy Attorney General will, in turn, be advised. When another Departmental official is the subject of a threat, the Deputy Attorney General will be advised by the appropriate Office or Division. The Marshals Service will advise the Department of threats against officials of the courts.

D. The Court Security Division, USMS Headquarters, will be advised of the threat by the U.S. Marshal's Office.

E. If the threat is not clearly defined, is complex, or is of a more serious nature, an assessment may be conducted by the USMS Threat Analysis Division (TAD).

F. The determination of the extent of security to be provided will be made by the Marshals Service, based upon all available information, including that developed by the FBI.

G. The FBI shall report by the most expeditious means to the U.S. Marshal any progress in a threat case, including negative findings. A copy of the written findings will be forwarded to the U.S. Marshal when complete.

H. If there is disagreement with a Marshals Service determination that the subject is not in danger and is not in need of personal protection, a memorandum will be prepared by the Service for the Deputy Attorney General, indicating this and transmitting a Threat Assessment Report. A copy of the assessment will also be sent to the Director, FBI, with notification of the Marshals Service's intent not to initiate or continue protective services unless information indicating that there is danger is provided by the FBI or the Deputy Attorney General's Office. If no such information which would alter the assessment is received or developed from any source, the security detail will be terminated.

1-2.310 U.S. Marshals Service -- Procedures for Special Deputation and Deputation of Local Law Enforcement Officers

Special Deputation. The United States Marshals Service, with the approval of the Attorney General, has the authority to deputize selected officers or employees of the United States and state or local law enforcement officers in furtherance of federal law enforcement missions. The following procedures shall be followed:

A. Special deputation shall be authorized only upon a showing of facts that indicate that the federal interest requires such deputation. All deputations expire automatically on June 30 of each year, if not specified sooner. Renewals must be initiated by the requesting agency and must include specific justification.

B. Only federal employees shall be deputized unless circumstances are such that not enough qualified federal employees are available for a given mission and/or a special requirement exists for specific non-federal employees.

C. Federal agencies soliciting special deputations shall be required to evaluate and nominate only those persons who have held positions and have shown expertise in the law enforcement field. Such requests must be made to the Deputy Director, U.S. Marshals Service, by the requesting federal agency. The request must state the specific reason for the deputations; must identify the nominees; and must certify that the nominees have qualified with the use of firearms within the last twelve months.

Deputation of Local Law Enforcement Officers. An amendment to the Controlled Substances Act (21 U.S.C. Section 878), authorizes the Attorney General to deputize state and local law enforcement officers specifically for enforcement of Federal Narcotics laws. As a result, the Drug Enforcement Administration and the Federal Bureau of Investigation possess the delegated authority to deputize state and local officers when needed to assist drug enforcement missions.

A. Requests for deputation of state and local officers to assist federal drug enforcement activities should be directed to the DEA or the FBI. Special deputation for all other (non-drug related) federal law enforcement purposes remains with the U.S. Marshals Service.

B. Special deputation is not required for access to federal grand jury information. Rule 6(e)(3)(A)(ii), Fed.R.Cr.P., provides that state and local officers can have access to grand jury material for purposes of assisting in federal law enforcement efforts. Moreover, with judicial approval, disclosure may be made to state officials for the separate purpose of an independent state investigation and state prosecution for violations of state criminal law. *See* Rule 6(e)(3)(C)(iv), Fed.R.Cv.P.

C. Special deputation of state or local officers, or translators, is not necessary for wiretaps interception or listening purposes. *See* 18 U.S.C. Section 2518(5).

D. Special deputized state or local officers are not federal employees for compensation purposes since they are not appointed to a federal civilian position. *See Walton v. United States*, 213 Ct. Cl. 755 (1977). Thus, they are not entitled to Title 5, U.S. Code of FLSA compensation from the United States. They must be compensated, if at all, from their state or local employer. Reimbursements for expenses, including overtime are solely a matter of intergovernmental agreement.

E. The Federal Employees Compensation Act, 5 U.S.C. Section 8101, *et seq.* specifically extends benefits to state and local officers who are injured while engaged in the apprehension of persons committing federal crimes and generally extends benefits to "an individual rendering personal service to the United States." Thus, state officers may be covered by the federal workers' compensation statutes. There is no requirement for special deputation. If applicable, this is the exclusive remedy the state officer has against the United States for injuries, *City of Whitier v. United States Department of Justice*, 598 F.2d 561 (9th Cir. 1979), and the officer must generally first seek state or local worker's compensation. Federal benefits can supplement state benefits.

1-2.400 Boards

Sections 1-2.401 through 1-2.403 outline the organization and functions of the Executive Office for Immigration Review, U.S. Parole Commission, and the Foreign Claims Settlement Commission.

1-2.401 Executive Office for Immigration Review

Background. On January 9, 1983, the Executive Office for Immigration Review (EOIR) was created through an internal Department of Justice (DOJ) reorganization which combined the immigration judge function previously performed by employees of the Immigration and Naturalization Service (INS), with the Board of

Immigration Appeals (BIA). Originally, EOIR included the Office of the Director, the BIA, and the Office of the Chief Immigration Judge (OCIJ), which supervised the performance of the Immigration Judges located in courts throughout the nation. In March 1987, the Office of the Chief Administrative Hearing Officer (OCAHO), was established as an additional unit within EOIR. OCAHO is responsible for administering the hearing process issues arising under the employer sanctions, anti-discrimination, and document fraud provisions of the Immigration and Nationality Act (INA). EOIR is completely independent of both the INS, the organization charged with the enforcement of the immigration laws, and the Office of Special Counsel for Immigration Related Unfair Employment Practices, the entity charged with the enforcement of the anti-discrimination provisions of the INA.

Responsibilities. The Attorney General is charged with the administration and enforcement of the INA, and all other laws relating to the immigration and naturalization of aliens. The Attorney General has delegated to EOIR certain aspects of her authority to administer and interpret the immigration laws. Specifically:

1. Immigration Hearings
2. Review of Immigration Hearings
3. Employment Discrimination, Document Fraud, and Employer Sanctions Hearings

Essentially, EOIR's mission is to provide uniform interpretation and application of immigration law, ensuring fair treatment for all parties involved.

Organization. EOIR is one of the Offices, Boards, and Divisions (OBDs) of the U.S. Department of Justice. EOIR is comprised of four major entities reporting to the Director: the Board of Immigration Appeals; the Office of the Chief Immigration Judge, which includes a headquarters staff and all Immigration Courts located throughout the country; the Office of the Chief Administrative Hearing Officer; and the Office of the Associate Director. *See generally* DOJ Organization and Functions Manual at 17.

1-2.402 U.S. Parole Commission

The U.S. Parole Commission is an independent agency in the Department of Justice. The Department is responsible for providing administrative support for the Commission. The authority for the functions of the U.S. Parole Commission is found in Chapter 311, 18 U.S.C. §§ 4201 to 4218; 18 U.S.C. Sections 4106 and 4106A; and Public Law 104-232 (October 2, 1996). The Chairman of the three-member Commission is responsible for assigning other members of the Commission to serve as Vice Chairman, members of the National Appeals Board, and Regional Commissioner. However, the concurrence of the Attorney General is required for those assignments.

The functions entrusted to the Commission by these statutes, and described in 28 C.F.R. §§ 01.124 through 01.127 and 2.1 through 2.64, include the following: exclusive authority to grant, modify, or revoke paroles of U.S. prisoners convicted of crimes that were committed prior to November 1, 1987; to issue warrants for violations of parole or mandatory release, to re-parole or re-release mandatory releases; to determine the date on which a prisoner shall be released on parole in any case in which the committing court specifies that such date shall be determined by the Commission; and to promulgate rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners. The Commission also has responsibility for determining release duties for prisoners transferred to the United States pursuant to prisoner transfer treaties. The Commission's responsibility for the supervision of federal parolees and persons released upon expiration of their sentences by operation of law under good time statutes (so-called mandatory releases) is exercised through the Federal Probation Officers under the provisions of 18 U.S.C. §§ 3655 and 4203(b). The setting and modification of terms and conditions governing the prisoner's release on supervision is also the responsibility of the Commission.

Under Public Law 104-232, the Attorney General must report annually to Congress, beginning on May 1, 1998, as to whether the Parole Commission should continue in existence as an independent agency or have its functions transferred to the department of Justice by the self-executing order of the Attorney General, effective November 1 of the year in which such transfer is ordered.

1-2.403 Foreign Claims Settlement Commission

The Foreign Claims Settlement Commission has jurisdiction to determine claims of United States nationals against foreign governments for losses and injuries sustained by them, pursuant to programs which may be authorized under specific legislation. Available funds have their sources in international settlements, or liquidations of foreign assets in this country by the Departments of Justice or Treasury, and from public funds when provided by the Congress. *See* 28 C.F.R. § 0.128.

1-2.500 United States Attorneys

The United States Attorneys serve as the nation's principal litigators under the direction of the Attorney General. As such, the United States Attorneys conduct most of the trial work in which the United States is a party.

There are 93 United States Attorneys stationed throughout the United States, Puerto Rico, Guam and the Northern Marianas. One United States Attorney is assigned to each judicial district with the exception of Guam and the Northern Marianas, where a single United States Attorney serves in both districts.

A complete discussion of United States Attorneys, Assistant United States Attorneys, Special Assistants, and the Attorney General's Advisory Committee of United States Attorneys, is set forth in Chapter 2, Title 3, Executive Office for United States Attorneys. Title 3 also sets forth administrative policy and financial litigation policy for the Offices of the United States Attorneys.